

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD RHONE,

Petitioner,

Case No. 16-cv-12912

v.

HON. MARK A. GOLDSMITH

CARMEN PALMER,

Respondent.

OPINION AND ORDER
DISMISSING CASE AND DENYING A CERTIFICATE OF APPEALABILITY

Petitioner Edward Rhone filed a pro se “Motion to Hold Habeas Petition in Abeyance” with this Court (Dkt. 1), but did not submit a petition for a writ of habeas corpus prior to or with his motion. Petitioner also did not pay the required filing fee, nor did he submit an application to proceed in forma pauperis. See 28 U.S.C. § 1914(a); 28 U.S.C. § 1915; Rule 3 of the Rules Governing § 2254 Cases. Therefore, the Court issued a deficiency order on August 12, 2016 requiring Petitioner to submit a habeas petition pursuant to 28 U.S.C. § 2254 and to either pay the filing fee or submit a properly completed in forma pauperis application. See 8/12/2016 Order (Dkt. 2). The order provided that if Petitioner did not do so within 30 days, his case would be dismissed. Id.

The time for submitting the habeas petition and either the filing fee or the required information has elapsed and Petitioner has failed to correct the deficiencies. Accordingly, the Court dismisses this case without prejudice. Petitioner may institute a new action by filing a proper habeas petition with payment of the filing fee or an in forma pauperis application. This

case will not be reopened. The Court makes no determination as to the merits of any potential habeas claims.

Before Petitioner may appeal the Court's decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal court denies relief on procedural grounds without addressing the merits of a habeas petition, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484-485 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court denies a certificate of appealability.

SO ORDERED.

Dated: September 29, 2016
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 29, 2016.

s/Karri Sandusky
Case Manager